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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

B.I.P. CORPORATION, Plaintiff, vs. MITEC TELECOM, INC., AND DOES 1 TO 30, Defendant.	Case No. 08 CV 0313 H (CAB) **REQUEST FOR JUDICIAL NOTICE AND DECLARATION OF DAVID R. SUGDEN IN SUPPORT OF DEFENDANT MITEC TELECOM, INC.'S MOTION TO DISMISS UNDER RULE 12(b)(6), AND IN THE ALTERNATIVE FOR SUMMARY JUDGMENT UNDER RULE 56** Date: October 20, 2008 Time: 10:30 a.m. Place: Courtroom 13 Complaint Filed: January 18, 2008 Trial Date: None Set

REQUEST FOR JUDICIAL NOTICE

Defendant Mitec Telecom, Inc. ("Mitec") respectfully requests that this Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the documents listed below and attached hereto. The listed documents were filed by Mitec in *Mitec Telecom, Inc. v. BIP Corporation and Export Development Canada*, Quebec Superior Court, District of Montreal Case No. 500-17-040674-080 (the "Quebec Action"). The issues in that action have a direct relationship to the matters at issue in the instant case; indeed, the parties in both actions are identical (there is an additional party, another defendant, in the Quebec Action), and many of the same factual and legal issues are the same in both cases. (Declaration of David R. Sugden, ¶ 2.) Accordingly, it is appropriate for this Court to take judicial notice of the attached documents. *Bennett v. Medtronic Sofamor Danek, Inc.*, 285 F.3d 801, 803 (9th Cir. 2002) ("We grant Medtronic's request that we take judicial notice of various filings in the Tennessee proceeding"); *MGIC Indemnity Corp.v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (confirming that courts may take judicial notice of pleadings filed in other court proceedings); *United States ex rel. Robinson Rancheria Citizens Council v.Borneo*, 971 F.2d 244, 248 (9th Cir. 1992) ("We 'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue'"). Mitec thus requests that the Court take judicial notice of the documents described in the accompanying Declaration and attached hereto.

Dated: September 5, 2008

CALL, JENSEN & FERRELL
A Professional Corporation
SCOTT J. FERRELL
DAVID R. SUGDEN

By: */s/ David R. Sugden*
DAVID R. SUGDEN

Attorneys for Defendant Mitec Telecom, Inc.

DECLARATION OF DAVID R. SUGDEN

I, David R. Sugden, declare as follows:

1. I am an attorney admitted to practice before all the courts of the State of California and before the United States District Court for the Southern District of California. I am a shareholder of the firm of Call, Jensen & Ferrell, counsel of record for Defendant Mitec Telecom, Inc. ("Mitec") in this action. I make this Declaration in support of Mitec's Motion to Dismiss Under Rule 12(b)(6) and, in the Alternative, for Summary Judgment Under Rule 56, and as a request for judicial notice of the documents described below. I have personal knowledge as to all matters set forth in this Declaration, and could and would competently testify thereto under oath if called as a witness.

2. The listed documents were filed by Mitec in *Mitec Telecom, Inc. v. BIP Corporation and Export Development Canada*, Quebec Superior Court, District of Montreal Case No. 500-17-040674-080 (the "Quebec Action"). The issues in that action have a direct relationship to the matters at issue in the instant case; indeed, the parties in both actions are identical (there is an additional party, another defendant, in the Quebec Action), and many of the factual and legal issues are the same in both cases.

3. Attached hereto as Exhibit "A" is a true and correct copy of the Motion to Institute Proceedings filed by Mitec on January 16, 2008, in the Quebec Action. I obtained a copy of this document directly from the offices of Fraser Milner Casgrain LLP, counsel for Mitec in the Quebec Action.

4. Attached hereto as Exhibit "B" is a true and correct copy of the Motion for Special Mode of Service, filed in the Quebec Action simultaneously with the Motion to Institute Proceedings, and granted by the Court in the Quebec Action on January 18,

2008. I obtained a copy of this document directly from the offices of Fraser Milner Casgrain LLP, counsel for Mitec in the Quebec Action. A certified translation of this document is being submitted to the Court concurrently herewith. Exhibit "B" includes a true and correct copy of the proof of service of the Quebec Action by facsimile on January 18, 2008. A certified translation of that document is also being submitted to the Court concurrently herewith.

5. Attached hereto as Exhibit "C" is a true and correct copy of the Affidavit for Judgment, filed by Mitec in the Quebec Action on or about February 27, 2008, which includes true and correct copies of the referenced Exhibit Nos. P-1 through P-8. I obtained a copy of this document directly from the offices of Fraser Milner Casgrain LLP, counsel for Mitec in the Quebec Action.

6. Attached hereto as Exhibit "D" is a true and correct copy of the Judgment rendered by in the Quebec Action on April 18, 2008. I obtained a copy of this document directly from the offices of Fraser Milner Casgrain LLP, counsel for Mitec in the Quebec Action.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct, and that this Declaration was executed on September 5, 2008, at Newport Beach, California.

/s/ David R. Sugden
David R. Sugden